



## Board Development Roles & Responsibilities

Vici Nagel  
President/CEO  
High Desert Resource Network

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## Is Your Board Effective?

- Do they know and fulfill all their responsibilities?
- Are they overly involved in operations?
- Are they great fundraisers?
- Are they great at promoting your organization?
- Numbers / Clout vs. Effectiveness

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## Roles & Responsibilities

- Activities and affairs of the corporation are conducted, and all corporate powers are exercised under the ultimate direction of the Board ... as a unit.
- Management tasks may be delegated, but the Board is ultimately responsible

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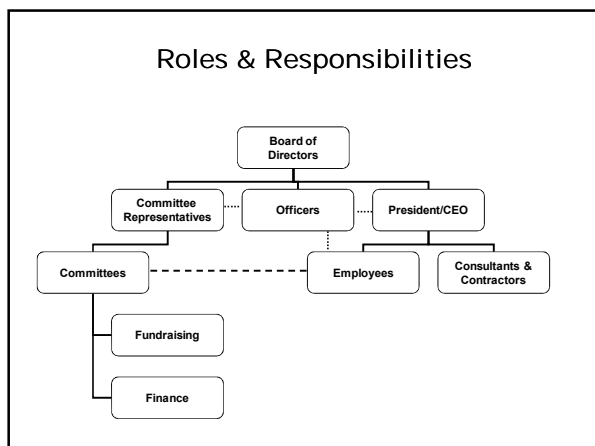
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### Board / Staff Roles and Responsibilities

- The Board of Directors is responsible for setting and ensuring that policies are adhered to.
- The Staff is responsible for implementing the policies set by the Board of Directors.

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### Board / Staff Roles and Responsibilities

- One of the key Board responsibilities is to annually review the Chief Executive Officer and set executive compensation.
- The CEO (Executive Director) is responsible for hiring/firing, supervising, and setting compensation (within budget limitations) of all other employees.

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### Laws Governing the Board and/or Non-Profit Corporation

- California Non-Profit Corporation Law
- Internal Revenue Code
- Revenue & Taxation Code
- Securities Code
- Other miscellaneous laws:
  - Government Code
  - Business & Professions Code
  - State and/or Federal Regulations
- Bylaws

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### Fiduciary

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### Fiduciary

- Fi-du-ci-ary: a person who holds something  
in trust for another

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- For whom are you holding something in trust?
- What are you holding in trust?

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- For whom are you holding something in trust?
  - The people of California / public benefit
  - Donors
  - Clients
  - Other
- What are you holding in trust?
  - The mission
  - Donations
  - Clients' best interest

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### Director's Fiduciary Duty

- A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

• Corporations Code §§ 5231(a), 7231(a)

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### Two Main Obligations

- Duty of Care
- Duty of Loyalty

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### Duty of Care

- Be informed, and make informed decisions
- Commit the time necessary to be informed, and attend meetings regularly
- Reliance upon others for information is balanced by the duty of inquiry
- Do not be afraid to ask questions – it's your duty

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### Duty of Loyalty

- Director's conduct in good faith and in the best interests of the corporation
- Two kinds of transactions directly involved in the duty of loyalty:
  - Interested director transactions (self dealing)
  - Corporate opportunities

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### Also ... Duty of Obedience

- Faithful to the mission and goals
- The public trusts us to use donated funds to fill our stated mission and goals

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### In Making Decisions

- Director must:
  - Be disinterested in the subject matter;
  - Be appropriately informed; and
  - Act in good faith belief that decision is in the best interests of the corporation

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### Restriction Regarding Interested Directors

- Section 3. 04. Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the board may be interested persons. For purposes of this Section, "interested persons", means either:
  - Any person currently being compensated by the Corporation for services rendered it within the previous twelve (12) months, whether as a full or part-time officer or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; or
  - Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

HDRN Bylaws

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### Other Fiduciary Duties

- Duty of Disclosure
- Confidentiality

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### Typical Legal Issues Boards May Face

- Organizational and governance matters
- Tax issues
- Contractual relationships
- Personnel practices
- Liability and litigation concerns
- Relationships with other charitable and for-profit affiliates

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### Legal / Tax Issues: Qualifying for and maintaining exempt status

- Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to animals, no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

• IRS § 501(c)(3)

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### Legal/Tax Issues: Qualifying for and maintaining exempt status

- Organized exclusively for exempt purposes
- Operated primarily for exempt purposes
  - Articles of Incorporation
- Refrain from inurement
- Avoid electioneering
- May not engage in substantial lobbying
  - Alliance for Justice
  - <http://www.afj.org/for-nonprofits-foundations/about-advocacy/lobbying.html>

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### Legal/Tax Issues continued ...

- Unrelated business taxable income
  - [www.irs.gov/charities](http://www.irs.gov/charities)
  - [www.boe.ca.gov](http://www.boe.ca.gov)

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### Legal Issues continued ...

- Nonprofit Integrity Act of 2004
  - Registration Info <http://ag.ca.gov/charities/faq.php>
  - A certified audit is required for all fiscal years ending on or after June 30, 2005
  - Audit Committee Cannot be:
    - Staff Members (employees of the charity)
    - President or CEO
    - Treasurer or CFO
    - Comprised of 50% or more from Finance Committee
  - Executive Compensation, including benefits, must Be Reviewed And Approved by the Board
  - Fundraising Counsel and Professional Fundraisers
  - Raffles

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### Raffles

- Registration is not required if all tickets for a drawing are free, and solicitations of voluntary donations to the organization are in no way connected to distribution of tickets, and this is made clear to all participants. If you require a "donation" in return for a ticket, you must register. (Hospitals Exempt)
- 90% of proceeds must be use for charitable purposes
- Can not advertise or sell online
  - <http://ag.ca.gov/charities/faq.php>

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### Legal Issues continued ...

- Personnel Practices
  - Use-It-Or-Lose-It Vacation
  - Employees who "volunteer" at the agency
  - "At-Will" Employment Status
  - Paying everyone as Salaried employees
  - Independent Contractors
  - <http://www.calchamber.com/store>
  - HDRN Members receive copy of policies
- If you aren't sure, consult a professional!

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### Additional Key Responsibilities

- Determine the organization's mission and purpose.
- Select the chief executive.
- Provide proper financial oversight.
- Ensure effective organizational planning.
  - Copy of Strategic Plan?
- Enhance the organization's public standing.
- Ensure adequate resources.

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### Ensuring Adequate Resources

- "If there is a first principle in fund raising, it is this: the board of directors has the responsibility for ensuring that the organization's mission is carried out, and of necessity this means finding the resources to do so."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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### Does that mean I have to help raise funds?!

- "The logic is irrefutable: board members own the organization and are its stewards. If they, who purportedly are the strongest advocates, won't take a lead role in raising money, why should anyone else?"
- "Lacking a fully-committed board, it will not be difficult to involve others, it will be practically impossible."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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### But that's what we hired the staff to do!

- "While the development staff does much of the legwork, as well as the planning and training, fund raising ultimately succeeds because of the time and effort community leaders put in to it."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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Does that mean that I have to give money?

- "To demonstrate their commitment, board members must first make a generous gift proportionate to their means."
- "Before you can hope to persuade another person to support your cause, you must demonstrate your own belief by contributing."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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But I volunteer my time. Isn't that enough?

- "While time and money are both essential, one without the other isn't enough."
- "Time is not the same as money. You cannot pay your staff or buy your office supplies with your time. *Both* are equally important commitments for a board member."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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- "Fundraising isn't rocket science. It's simple, but it does take time." Vici Nagel

- The right person, asking the right person, for the right amount of money, for the right cause, at the right time.

- "You aren't begging; you're appealing on behalf of a worthy cause from which you gain nothing financially."

• David Lansdown  
• *Fund Raising Realities Every Board Member Must Face*

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### Important Policies to Adopt

- Code of Ethics (Values)
  - <http://www.independentsector.org/issues/accountability.html>
- Conflict of Interest Policy
- Whistle-Blower Policy
- Document Destruction/Retention Policy
- Anti-harassment/Nondiscrimination
- Investment Policy
- HDRN Members receive copies

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### Liability and Insurance Issues

- Indemnification of Directors
- Insurances to consider
  - Commercial General Liability (CGL)
  - Directors & Officers (D&O)
  - Workers' Compensation
  - Employees' Health and/or Life
  - Employment Practices

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### Good Governance Practices

- Oversee operations to assure effective and ethical management
- Focus on Board's oversight role ... do not micromanage
- Fulfill independent obligations, and exercise independent judgment

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Good Governance Practices continued ...

- Periodically assess Board and Committee composition and responsibilities, particularly:
  - Nomination or Governance Committees
  - Finance and/or Audit Committees
- Provide accurate and complete disclosures of all material financial information
- Discuss – Don't "rubber stamp"

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- And just as important ...

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**PASSION!**

- YOU are the Champion!
  - The Neglected and Disadvantaged
  - Those without a voice
  - Those in pain and in need
  - THE CAUSE

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### Summary

- YOU are ESSENTIAL - A strong Board, exercising good governance practices and working with management, enables the organization to effectively meet its mission and deal with issues that arise
- Be informed & Ask questions
- Commit the time necessary to do the job well

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### Summary

- Keep the best interests of the organization in the front of your mind at all times
- Financial stewardship means policies, as well as giving and getting

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### Summary

- Remember the Passion!
- Have Fun!

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- Questions?
- So what is your BQ?

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For More Information  
[www.BoardSource.org](http://www.BoardSource.org)

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For Presentations to your Board

Vici Nagel  
 President/CEO  
 PO Box 293928  
 Phelan, CA 92329  
 760-949-2930  
[www.HDRNetwork.org](http://www.HDRNetwork.org)

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